

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS, NUMBER 94-0638
CONTROLLED SUBSTANCE EXCISE TAX
For the Period: 1994**

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ISSUE**I. Controlled Substance Excise Tax – Liability**

Authority: Ind. Code § 6-7-3-5;
Ind. Code § 6-8.1-5-1;
Bailey v. Indiana Department of Revenue, 660 N.E.2d 322 (Ind. 1995).

The taxpayer protests the assessment of the Controlled Substance Excise Tax.

STATEMENT OF FACTS

The taxpayer was arrested by the Madison County Drug Task Force on or about January 14, 1994, and charged with dealing in marijuana and maintaining a common nuisance. A total of 1,254.8 grams of marijuana was confiscated from the taxpayer's residence. On May 2, 1994, a jeopardy assessment was made by the Department of Revenue and served on the taxpayer for collection of the Controlled Substance Excise Tax due on the possession of marijuana. Counsel for the taxpayer filed a protest of the assessment with the Department. Counsel has since notified the Department that he no longer represents the taxpayer in this matter. An administrative hearing was held on December 1, 1999. The taxpayer was given until December 8, 1999 to submit evidence on his behalf. The taxpayer submitted copies of a letter from his former attorney, the Department of Revenue Jeopardy Assessment, an Information from Madison County Court, and a Madison County Summons. Further facts will be provided as necessary.

I. Controlled Substance Excise Tax – Liability

DISCUSSION

The taxpayer protests the imposition of the Controlled Substance Excise Tax, arguing that the marijuana he was charged with possessing actually belonged to his neighbor. In Indiana, the manufacture, possession, or delivery of marijuana is taxable. Ind. Code § 6-7-3-5. Ownership of the marijuana is not the triggering event for purposes of the assessment of the Controlled Substance Excise Tax. Bailey v. Indiana Department of Revenue, 660 N.E.2d 322, 324 (Ind. 1995). Since no taxes were paid on the marijuana in the taxpayer's possession, the Department of Revenue assessed the tax against the taxpayer and demanded payment. "The notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Ind. Code § 6-8.1-5-1(b). The taxpayer has submitted no evidence showing he was not in possession of the marijuana.

The issue of double jeopardy was considered at the hearing. The criminal charges against the taxpayer were dismissed. No jury was impaneled and the taxpayer did not plead guilty to the criminal charges. The taxpayer, therefore, was not put in jeopardy relating to the criminal charges. The Controlled Substance Excise Tax was the first and only time the taxpayer was put in jeopardy and, thus, double jeopardy is not an issue in this case. The Controlled Substance Excise Tax was properly assessed in this case.

FINDING

The taxpayer's protest is denied.